

APPEAL NO. 023148  
FILED DECEMBER 23, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 14, 2002. The hearing officer resolved the disputed issue by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the second quarter from August 9 through November 7, 2002. The claimant appealed on sufficiency of the evidence grounds and the respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was not entitled to SIBs for the second quarter. Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The claimant contended that he had no ability to work during the qualifying period in dispute. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

On appeal, the claimant contends that the hearing officer erred in considering the peer review doctor's medical report as an "other record" for purposes of Rule 130.102(d)(4). The claimant argues that the peer review doctor's medical report is based on a functional capacity evaluation (FCE) dated April 23, 2002, that was submitted as evidence for the first quarter of SIBs and that the same hearing officer found that "[t]he FCE dated April 23, 2002 does not indicate Claimant has an ability to work." (Claimant's Exhibit No. 3, Decision and Order for first quarter of SIBs). In reviewing the record, specifically Claimant's Exhibit No. 3, we note that the hearing officer also found that the "[n]o record offered at the proceeding showed that Claimant had an ability to work" for the first quarter of SIBs. In the instant case, the carrier offered evidence from a peer review doctor that showed that the injured employee is able to return to work. The peer review doctor's medical report was not in evidence for the first quarter of SIBs. The evidence sufficiently supports the hearing officer's determination for the second quarter of SIBs that based on the peer review doctor's medical report, the claimant is capable of working at a sedentary to light level, thus the claimant is not entitled to SIBs for the second quarter.

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies

in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)). We are satisfied that the challenged determination of the hearing officer is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ASSOCIATION CASUALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**HAROLD FISHER, PRESIDENT  
3420 EXECUTIVE CENTER DRIVE, SUITE 200  
AUSTIN, TEXAS 78731.**

---

Veronica Lopez  
Appeals Judge

CONCUR:

---

Elaine M. Chaney  
Appeals Judge

---

Susan M. Kelley  
Appeals Judge